

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Robert A. Immerman and Russell Benton Snell
 Serial No. : 09/822,154 Confirmation No.: 6306

REMARKS

This Response replies to the Office Action mailed May 11, 2004. Applicant submits herewith claims in compliance with the revised amendment practice 37 CFR 1.121 effective July 30, 2003. Because this Response contains claims originally amended in July 2003, prior to the effective date of the revised amendment practice, the claims were in the older format. This submission assumes that the reply submission of December 2, 2003 has not been entered, so that "new" claims in the December 2, 2003 submission are again labeled as "new". Also, for ease of examination, applicant includes the remarks from the December 2, 2003 submission.

Remarks in Response to Office Action mailed September 3, 2003

Applicant submitted, via facsimile on August 27, 2003, a second preliminary amendment, but this was disapproved by the Examiner in the November communication. Thus, in this Response, applicant resubmits the changes. To more clearly define the invention, applicant adds new claims 23-26. Support for these new claims can be found in Figures 2 and 3, in original claims 1 and 11, and in the specification on page 4, fourth paragraph as amended in the amendment mailed December 16, 2002.

Claim Rejections - 35 USC §112

The Examiner has rejected claims 1-5 and 11-15 under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Application herein amends claims 1 and 11; support for these amendments is found in the specification on page 3, lines 17-18. The amended

claims more clearly describe the invention and remove the language that the Examiner rejected. Thus, applicant requests that this rejection be withdrawn.

The Examiner has rejected claim 22 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant herein amends claim 22 to remove the phrase "rectangular opening" which was inserted erroneously. Applicant requests that this rejection be withdrawn.

Claim Rejections - 35 USC §102

The Examiner has rejected claims 1, 2, 4, 11, 12, and 14 under 35 U.S.C. 102(b) as being anticipated by Raphael, U.S. Patent No. 3,181,702. Applicant respectfully traverses this rejection. As amended herein, claims 1 and 11 more clearly state that the rectangular opening of applicant's device must be larger than the head of the suction cup. Because of these dimensions, the neck of the suction cup is retained in the rectangular opening of the structure. Applicant's device is held on the wall or other flat surface solely by the suction cups. The support is achieved by the force of gravity pushing the device down onto the neck of the suction cup and the suction cup adhering to the wall by suction and holding the device onto the wall. By contrast, Raphael discloses a device which is significantly larger than the head of its suction cup. Raphael's device retains the neck of the suction cup by the friction of the neck against the wires. If the neck did not rub against the wires, the suction cup would not be retained. Applicant points out that the suction cups in Raphael's device serve to hold the device against a wall but the device is also held in place on the wall by the shower head. Thus Raphael does not disclose a device having an opening smaller than the uncompressed diameter of the head of a suction cup and larger than the diameter of the neck of the suction cup as applicant claims in amended claims 1 and 11. This is a specific limitation in claims 1 and 11 which are not found in Raphael, wherefor Raphael cannot support a rejection under 35 U.S.C. 102(b). Applicant

states that claims 2 and 4 depend from claim 1, and claims 12 and 14 depend from claim 11 and incorporate all of the limits therein. Thus, applicant respectfully requests that the rejection of claims 1, 2, 4, 11, 12 and 14 be withdrawn.

Claim Rejections - 35 USC §103

The Examiner rejected claims 3, 5, 13, and 15 under 35 U.S.C. 103(a) as being unpatentable over Raphael, cited above. As stated above, Raphael does not disclose all of the features of applicant's invention as amended herein. Applicant states that claims 3 and 5 depend from claim 1, and claims 13 and 15 depend from claim 11 and incorporate all of the limits therein. Thus, Raphael does not anticipate claims 3, 5, 13 and 15 and applicant respectfully requests that the rejection of these claims be withdrawn.

New Claims

Applicant submits new claims 23-26 to more clearly define the invention. New claims 23 and 24 define the invention with even further limitations than allowable claim 22. New claims 25 and 26 contain the additional limitation that the apparatus is held or supported only by suction cups which further distinguishes the claimed invention from Raphael which is supported by portions of the device itself in addition to the support provided by the suction cups. New claim 25 is derived from claim 1 and new claim 26 is derived from claim 23.

Allowable Subject Matter

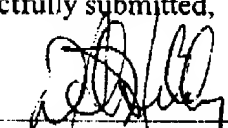
Applicant appreciates that the Examiner finds claim 22 to have allowable subject matter. As stated above, applicant amends claim 22 herein to overcome the rejection under 35 U.S.C. 112, second paragraph.

It is respectfully submitted that the application is now in condition for allowance, and such action is requested. No new matter has been added. The Examiner is invited to telephone the

undersigned if there are any matters which could be discussed to expedite the prosecution of the above-identified application.

Respectfully submitted,

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